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SUPERIOR COURT  
YAVAPAI COUNTY  
2009 OCT 13 AM 9:14 ✓  
JEANNE HIGGS, CLERK  
Heather Figueroa  
BY: \_\_\_\_\_

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S  
MOTION TO REQUIRE THE STATE TO  
ELECT WHICH OF THE (f)(6)  
AGGRAVATORS IT IS ALLEGING IN  
ADVANCE OF OCTOBER 20, 2009  
EVIDENTIARY HEARING ON  
PROBABLE CAUSE

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Require the State to Elect Which of the (f)(6) Aggravators It Is Alleging in Advance of October 20, 2009, Evidentiary Hearing on Probable Cause. At the October 20, 2009 hearing, the State will show there is probable cause to believe Defendant committed the brutal murder of his ex-wife, Carol Kennedy, in both a cruel and depraved manner pursuant to A.R.S. § 13-703(f)(6)<sup>1</sup>.

"The element of cruelty focuses upon 'the pain and the mental and physical distress visited upon the victim,' while depravity focuses upon 'the mental state and attitude of the

<sup>1</sup> Renumbered as A.R.S. § 13-751(f)(6) effective January 1, 2009.

1 perpetrator as reflected in his words and actions.”” *State v. Villafruerte*, 142 Ariz. 323, 331, 690  
2 P.2d 42, 50 (1984) (citations omitted).

3 Cruelty involves the infliction of physical pain and/or  
4 mental anguish on a victim before death. A crime is committed  
5 in an especially cruel manner when a defendant either intended  
6 to inflict mental anguish or physical pain upon the victim, or  
7 reasonably foresaw there was a substantial likelihood the  
8 manner in which the crime was committed would cause the  
9 victim to experience mental anguish and/or physical pain before  
10 death.

11 *State v. Velazquez*, 216 Ariz. 300, 308, 166 P.3d 91, 99. (2007).

12 The heinous and depraved portion of the (F)(6)  
13 aggravator focuses on the defendant's state of mind at the time  
14 of the crime. *Gretzler*, 135 Ariz. at 51, 659 P.2d at 10.  
15 However, the inquiry concentrates on the defendant's mental  
16 state as evidenced through her actions. *State v. Rienhardt*, 190  
17 Ariz. 579, 590, 951 P.2d 454, 465 (1997). The factors used to  
18 establish a heinous and depraved state of mind are (1) relishing  
19 the killing, (2) ***commission of gratuitous violence***, (3)  
20 ***mutilation of the victim***, (4) senselessness of the killing, and  
21 (5) helplessness of the victim.

22 *State v. Carlson*, 202 Ariz. 570, 583-84, 48 P.3d 1180, 1193-94 (2002) (emphasis added).

23 Gratuitous violence occurs when the defendant uses  
24 violence in addition to that necessary to kill and intends to  
25 inflict such violence. *State v. Bocharski*, 218 Ariz. 476, 494,  
26 ¶¶ 85, 87, 189 P.3d 403, 421 (2008). ***It may be demonstrated  
by the continued infliction of violence after the defendant  
knew or should have known that a fatal action had occurred.***

27 *State v. Bearup*, 221 Ariz. 163, ¶ 52, 211 P.3d 684, 694 (2009) (emphasis added).

28 Carol was on the phone with her mother when she suddenly said “Oh no,” and the call  
29 disconnected. This indicates that Carol was aware that an attack was forthcoming. Carol had  
30 several defensive wounds which indicate she was conscious, aware, and alert at the time of the  
31 attack. Carol was discovered lying in a pool of her own blood. Carol’s body was dragged and  
32 repositioned to make it appear that her death had been caused by an accidental fall.

1 The medical examiner and forensic examiner determined that Carol was the victim of at  
2 least seven massive blows with a golf-club like object. The blows caused nine scalp  
3 lacerations varying in length from 1.5 to 4 inches, a fractured glabella (the area between the  
4 eyebrows just above the nose), and multiple skull fractures. Six of the blows resulted in either  
5 contusion to or penetration into Carol's brain tissue. Portions of Carol's brain tissue were  
6 protruding from the 4 inch laceration likely caused by the most forceful blow. Carol also  
7 suffered hemorrhage and lacerations to the ligaments in her neck which are consistent with an  
8 extreme extension injury of the head and neck with elevation to the chin. In other words,  
9 Carol's head was thrust up and back with such force that the ligaments in her neck were torn.

11 There is no doubt that Carol experienced severe mental anguish and physical pain  
12 before her death and that her murder was committed with gratuitous violence. The severity of  
13 the wounds alone demonstrates the ferocity of the attack. Carol was severely beaten, resulting  
14 in visible facial and skull fractures, mutilation to her head and face, and substantial blood loss.  
15 This evidence establishes probable cause for the cruelty prong. Likewise, the sheer number of  
16 blows in addition to the viciousness with which they were delivered causing the multiple  
17 lacerations to Carol's face and resultant mutilation which left Carol's skull in over 50 pieces  
18 show that Defendant used "violence in addition to that necessary to kill and intend[ed] to inflict  
19 such violence." *Bearup*, 221 Ariz. at ¶ 52, 211 P.3d at 694. This establishes probable cause  
20 for the depravity prong.  
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RESPECTFULLY SUBMITTED this 13<sup>th</sup> October, 2009.

Sheila Sullivan Polk  
YAVAPAI COUNTY ATTORNEY

By:

  
Joseph C. Butner  
Deputy County Attorney

COPIES of the foregoing delivered this  
13<sup>th</sup> day of October, 2009 to:

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Yavapai County Superior Court  
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